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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/087,014	03/01/2002	Henrik Hansen	12013/59301	2646
23838	7590	02/08/2006	EXAMINER	
KENYON & KENYON LLP 1500 K STREET N.W. SUITE 700 WASHINGTON, DC 20005			TSOY, ELENA	
			ART UNIT	PAPER NUMBER
			1762	

DATE MAILED: 02/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/087,014

Applicant(s)

HANSEN ET AL.

Examiner

Elena Tsoy

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16, 18-29 is/are pending in the application.
- 4a) Of the above claim(s) 20-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16, 18, 19 and 25-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Petition Decision

1. Upon the Decision of 6/15/2005 on the Petition under 37 CFR 1.182 filed August 31, 2004 requesting entry of claim 29 erroneously withdrawn by the July 14, 2004 Final Office Action, the claim 29 is examined, and the finality of the rejection of the last Office action is withdrawn. The new action is as follows:

Response to Amendment

2. Amendment filed on March 2, 2005 has been entered. Claims 1-16, 18-29 are pending in the application. Claims 20-24 are withdrawn from consideration as directed to a non-elected invention.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claim 29 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 1 recites moving therapeutic through a plurality of orifices positioned on a channel in the drum, i.e. *spraying* from the channel positioned in the drum. Claim 29 *further* limiting claim 1 recites tumbling an implant into a vat of therapeutic. Therefore, claim 29 is directed to a **combination of *spraying* therapeutic from the channel positioned in the drum and tumbling an implant into a vat of therapeutic**. However, the specification as filed describes that forcing therapeutic through

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the perforations 32 into the drum 31 thereby creating a standing *vat* of therapeutic is alternative to *spraying* therapeutic (See P18).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 2, 12, 13 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Vickery (US 3,991,750) in view of Lucke (5,302,201) for the reasons of record as set forth in Paragraph No. 2 of the Office Action mailed on December 3, 2004.

7. Claim 3 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Vickery (US 3,991,750) in view of Lucke (5,302,201), further in view of Yalkowsky (US 4,489,026) for the reasons of record as set forth in Paragraph No. 3 of the Office Action mailed on December 3, 2004.

8. Claim 4 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Vickery (US 3,991,750) in view of Lucke (5,302,201), further in view of Forster (US 4,581,242) for the reasons of record as set forth in Paragraph No. 4 of the Office Action mailed on December 3, 2004.

9. Claims 5, 6, 8, 14-16, 18, 25-28 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Iguchi et al (US 5,756,553) in view of Forster (US 4,581,242) and Schwartz et

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al (US 6,607,598) for the reasons of record as set forth in Paragraph No. 5 of the Office Action mailed on December 3, 2004.

10. Claims 7, and 9-11 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Vickery (US 3,991,750) in view of Lucke (5,302,201), further in view of Dunajtschik (US 4,586,457) for the reasons of record as set forth in Paragraph No. 6 of the Office Action mailed on December 3, 2004.

11. Claim 19 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Vickery (US 3,991,750) in view of Lucke (5,302,201), further in view of Fernandez et al (US 3,696,188) for the reasons of record as set forth in Paragraph No. 7 of the Office Action mailed on December 3, 2004.

12. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vickery in view of Lucke, further in view of Sandrock (US 3,484,360).

Vickery in view of Lucke are applied here for the same reasons of record as set forth in Paragraph No. 2 of the Office Action mailed on December 3, 2004.

Vickery in view of Lucke fails to teach that an implant is tumbled into a *vat* of therapeutic.

Sandrock teaches that articles can be coated in a rotating drum having perforations by partially immersing the drum in a coating liquid so that the perforations admit the coating liquid and tumbling the articles in a drum (See column 3, lines 50-53).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have placed a bottom of a drum of Vickery in view of Lucke in a bath so that the drum is partially immersed in a coating liquid sprayed from a channel; and implants are tumbled into a vat of therapeutic formed by spraying and by admitting the therapeutic through the

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perforations because Sandrock teaches that articles can be coated in a rotating drum having perforations by partially immersing the drum in a coating liquid so that the perforations admit the coating liquid and tumbling the articles in a drum.

Conclusion

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elena Tsoy whose telephone number is 571-272-1429. The examiner can normally be reached on Monday-Thursday, 9:00AM - 7:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy Meeks can be reached on 571-272-142323. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ELENA TSOY
PRIMARY EXAMINER


Elena Tsoy
Primary Examiner
Art Unit 1762

January 23, 2006